IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION (LODG.) NO.2109 OF 2006

Smt. Kanchandevi Shantilal Jain ..Petitioner.
Vs.
State of Maharashtra & Ors. ..Respondents.

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Mr. Rajendra Bindra for the Petitioner.
Ms. S.M. Dandekar, AGP for the State.
Ms. Kiran Bagalia for MMRDA.
Ms. A.R. Joshi for the BMC.

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CORAM: DR. D.Y. CHANDRACHUD, J.

14th November, 2006.

P.C. :

1. Rule, returnable forthwith. Counsel appearing for the Respondents waive service. By consent and at the request of the learned counsel, taken up for hearing and final disposal.

2. The Petitioner claims to be a tenant of the Fourth Respondent in respect of commercial premises bearing Shop No.7 admeasuring 173 sq. ft. situated at New Parsi Chawl, Sant Rohidas Marg (Sion-Bandra Link Road), Mumbai. According to the Petitioner, the Fourth Respondent acquired right, title and interest

under two deeds of conveyance dated 9th November, 1993 and that the tenancy was attorned on the same day. The Petitioner has stated before the Court that a business dealing in leather products is carried on therein and a shops and establishment licence has also been issued by the Municipal Corporation. The Municipal Corporation issued a notice on 28th November, 2001 calling upon the Petitioner to produce documents to show the authorization of the structure since it was proposed to widen the Sion-Bandra Link Road. On 11th March, 2002, the Assistant Municipal Commissioner, G-North Ward informed the Petitioner of the entitlement of the Petitioner to alternative accommodation at the same place after the area which was affected by road widening was removed. On 23rd December, 2002 a notice was again issued by the Assistant Municipal Commissioner informing the Petitioner that an area of 48.47 sq. ft. was affected by road widening. On 23rd March, 2006 MMRDA, the Second Respondent, issued notice under Section 351 of the Mumbai Municipal Corporation Act calling upon the Petitioner to show cause as to why the premises should not be demolished to facilitate the work of road widening. The Petitioner submitted a representation dated 5th April, 2006 and thereafter instituted these proceedings in order to challenge the

notice dated 23rd March, 2006.

3. At the hearing of these proceedings, the question that was placed in issue on behalf of the Petitioner was the entitlement of the Petitioner to alternative accommodation. The Municipal Corporation has filed an affidavit in reply of Mr. Ashwin B. Khanolkar, Assistant Commissioner, G-North Ward in which it has been stated that Sion-Bandra Link Road is being widened and that the structure of the Petitioner is affected. The Municipal Corporation states that it made an inventory and submitted a list of eligible and non-eligible persons to MMRDA for determining the question of alternative accommodation. The aforesaid list at Annexure II contains the name of the Petitioner at Sr. No. 325 and according to the Municipal Corporation the Petitioner has already been made eligible for commercial premises under a slum rehabilitation scheme being developed by a co-operative society called Dharavi Kalpataru Co-operative Society Limited. The Municipal Corporation has stated in its reply that if the Petitioner is eligible for commercial premises under the aforesaid SRA scheme in lieu of the present structure in respect whereof MMRDA has issued a notice under Section 351, the Petitioner would not be

entitled to another structure by way of alternative accommodation. An affidavit has also been filed in these proceedings by the Executive Engineer of MMRDA who states that in the report received by MMRDA together with the forwarding letter of the Municipal Corporation dated 9th August, 2006 the Municipal Corporation has observed that the structure of the Petitioner falls in the SRA scheme of Kalpataru Co-operative Housing Society Limited.

4. On behalf of the Petitioner it has been submitted that the eligibility of the Petitioner to participate in the SRA scheme of Kalpataru Co-operative Housing Society is distinct from her eligibility to alternative premises in respect of the notice issued by MMRDA under Section 351. Counsel appearing for MMRDA and the Municipal Corporation submitted before the Court that it is for the Petitioner to demonstrate that the structure in respect of which she has been found to be eligible to receive alternative accommodation in the SRA scheme of Kalpataru Co-operative Housing Society is distinct from the structure in respect of which the Petitioner claims alternative accommodation with reference to the notice under Section 351. Counsel appearing for the Petitioner

does not dispute the correctness of this submission. It has also been accepted by counsel appearing for the Petitioner that in respect of the premises falling within the purview of one public project being executed as the case may be by MMRDA or by the Municipal Corporation, the Petitioner would be entitled to one alternative accommodation. However, it has been submitted that the Petitioner would be in a position to demonstrate before the municipal authorities that the allotment which has been made to her in the SRA scheme is distinct from the allotment which she claims in respect of the road widening project being carried out by MMRDA. This dispute cannot be decided in the exercise of the writ jurisdiction under Article 226 and therefore it would only be appropriate and proper if the Petitioner is permitted to file a representation to the Assistant Commissioner, G-North Ward of the Municipal Corporation. The Petitioner would accordingly be at liberty to file a representation setting out separately the nature and description of the two sets of premises on the basis of which the Petitioner claims two separate allotments of commercial premises. The Petitioner shall together with the representation produce all documentary material to substantiate the case. In the event the Petitioner does so within a period of four weeks from today, the

Assistant Commissioner, G-North Ward of the Municipal Corporation shall examine the claim of the Petitioner and pass an order in accordance with law within a period of two months of the receipt of the representation. The Petition is accordingly disposed of.

5. It is needless to add that the Assistant Municipal Commissioner shall examine the claim of the eligibility of the Petitioner in respect of two alleged structures in accordance with law, including in particular the guidelines to the SRA scheme.